

HENRYK BIGAJER AND MARIA BIGAJER

JANUARY 30, 1958.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 7057]

The Committee on the Judiciary, to whom was referred the bill (H. R. 7057), for the relief of Henryk Bigajer and Maria Bigajer, having considered the same, report favorably thereon with an amendment and recommend that the bill do pass.

The amendments are as follows:

Page 1, line 11 and page 2, line 1, strike the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation is to pay Henryk Bigajer and Maria Bigajer \$1,000 in full settlement of their claims against the United States for the amounts of departure bonds posted by them and subsequently declared forfeited.

STATEMENT

Henryk Bigajer and his wife, Maria Bigajer, were natives of Poland, and were admitted into the United States on November 4, 1948, as a student and as a visitor, respectively. Their admittance was conditioned upon each of them posting a \$500 departure bond. They were granted one extension of their stay until October 27, 1949. Deportation proceedings were begun against them, but after approval of their applications of December 28, 1950, to adjust their status to that of permanent residents under the Displaced Persons Act, the deportation proceedings were discontinued. On May 11, 1953, after the Congress had approved the adjustment of their status to that of permanent residents, the records of the Immigration and Naturalization service were changed to reflect their admission to the United

States as permanent residents as of the date of their original entry, November 4, 1948.

Despite these events, their departure bonds had meanwhile been declared breached and the proceeds thereof were covered into the Treasury. The forfeiture had been declared in accordance with the conditions of the bonds which required that Mr. and Mrs. Bigajer depart within the time set for their temporary stay in the United States.

The report of the Department of Justice on this bill to the committee notes that this is a case where, after the bonds were declared forfeited for failure of the aliens to depart, their immigration status was retroactively adjusted to that of permanent residents as of the date of their original entry. The Department of Justice has advised the committee that under these circumstances it has no objection to the enactment of the bill.

In the case of *United States v. Manufacturers Casualty Insurance Company* (113 Fed. Supp. 402), there was involved a similar Displaced Persons Act situation. The court found that the retroactive manner of granting the alien permanent residence under the terms of the Displaced Persons Act had the effect of releasing the bonding company from its obligations under the bond for the failure of the alien to depart in accordance with its terms. The court further noted that the forfeiture was described as for liquidated damages rather than as a penalty, and that the damages contemplated were those expenses which the United States might incur in having to deport the alien. Where the alien had been given permanent residence the court noted that there could be no such expenses. Relevant portions of the *Manufacturers Casualty Insurance Co.* case are as follows:

[Excerpts from the opinion in the case of *United States v. Manufacturers Casualty Insurance Company*. Judge Dimock, June 16, 1953. Opinion No. 20564. Civil Case No. 81-291.]

FACTS

An alien was admitted to this country for a stated period of time so that he might attend school as a student. The defendant became a surety on a departure bond to insure the alien's departure on or before June 27, 1948. The alien failed to depart; the terms of the bond were considered breached and the Government is suing for the amount of the bond. The defendant makes this motion for summary judgment.

(This is the substance of the judge's opinion:)

The doubt as to defendant's liability arises from the fact that under section 4 of the Displaced Persons Act of 1948, adopted June 25, 1948, the alien went through a proceeding prescribed by that section and got Congress to grant a status of permanency, and the Attorney General recorded his admission for permanent residence as of the date of his entry into the United States, March 8, 1948.

The form of the bond is all important. "Defendant is to be bound in the sum of \$500 'as liquidated damages and not as a penalty'."

The bond is given "to insure that, at the expiration of such time, or upon failure to maintain the status under which admitted, he will depart the United States."

The passage of the Displaced Persons Act on June 25, 1948, did not prevent the alien from leaving on June 27, 1948, because that would be a general amnesty to all obligors on bonds such as these, and that was not the intent of Congress.

"The only possible alternative under which defendant may escape liability for the undoubted breach which occurred on June 27, 1948, is a subsequent release of the defendant on account of the final admission of the alien as a permanent resident *nunc pro tunc* as of March 8, 1948, the date of his original arrival."

"In my opinion, Congress and the Attorney General pursuant to a carefully laid out statutory plan did so release the defendant by retroactively admitting the alien as a permanent resident as of a date prior to the breach of the bond."

The bond was drawn to carefully avoid any imputation that it provided for a penalty. "Although, since the bond ran for the benefit of the people rather than a private individual, it might have lawfully provided for a penalty. *Illinois Surety Co. v. U. S.* (2 Cir. 229 Fed. 527), the instrument bound defendant to pay \$500 "as liquidated damages and not as a penalty."

Therefore, damages were agreed upon at \$500, but the plaintiff has retroactively and voluntarily eliminated the possibility that there can ever be any actual damages.

All the defendant did was agree to pay \$500 if the alien did not depart "without expense to the United States upon failing to maintain the status of an immigration student."

The \$500 was to cover actual expenses.

"If there had been no provision for liquidated damages, the United States could have recovered nothing except the expense involved in deporting the alien for breaking the conditions of his admission."

The bond fixed the amount of the expenses, "it did not make damages recoverable even if none could be suffered."

The Congress and Attorney General have retroactively made the alien a permanent resident and thus put it out of the power of the Attorney General ever to deport the alien. Since the United States as of a date prior to the breach of the bond, thus voluntarily prevented the possibility that it might suffer damages from such breach, it cannot now collect damages for that breach.

"It may well be that the action of the United States in admitting the alien would have constituted a release of liability for the breach of the bond even if that action had not included admitting the alien as of a date prior to the breach. The action of the United States in making the admission retroactive as of March 8, 1948, is, however, a clear indication of the intention of the United States to release the liability of the defendant which accrued thereafter upon the breach of the bond on June 27, 1948."

The committee has concluded that this is a proper case for legislative relief. The Department of Justice interposes no objection to the enactment of the bill, and the reasoning of the case cited above seems to apply directly to the facts of this matter. Therefore the committee recommends the favorable consideration of the bill.

UNITED STATES DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D. C., August 13, 1957.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H. R. 7057) for the relief of Henryk Bigajer and Maria Bigajer.

The bill would provide for the payment of the sum of \$1,000 to Henryk Bigajer and Maria Bigajer of Brooklyn, N. Y., representing the aggregate of departure bonds posted by claimants and subsequently forfeited.

The beneficiaries of this bill, Henryk Bigajer and his wife, Maria Bigajer, native-born citizens of Poland, were admitted into the United States on November 4, 1948, as a student and as a visitor, respectively, conditioned upon each of them posting a \$500 departure bond. They were granted one extension of stay until October 27, 1949. On December 19, 1949, the aliens, not yet having departed, applied for suspension of deportation. Deportation proceedings were instituted against them on September 25, 1950. Following the approval of their applications of December 28, 1950, to adjust their immigration status to that of permanent residents under the Displaced Persons Act, the deportation proceedings were discontinued. On May 11, 1953, following congressional approval of the adjustment of their status to that of permanent residents, the records of the Immigration and Naturalization Service were amended to reflect their admission for permanent residence retroactively to the date of their admission on November 4, 1948. Mr. and Mrs. Bigajer became naturalized citizens of the United States on November 11, 1954. In the meantime their departure bonds were declared breached and the proceeds thereof were covered into the Treasury.

Thus it will appear that after a proper forfeiture of the bonds, the immigration status of the aliens was adjusted to that of permanent residents retroactively to the date of their original entry. In the circumstances, the Department of Justice interposes no objection to the enactment of the bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.